

necessary or desirable for said District by said Board. *The District, through its Board of Directors, may contract with the Nixon Hospital District of Gonzales and Wilson Counties, Texas, for the District to lease, manage, or operate a health care facility located in the Nixon Hospital District of Gonzales and Wilson Counties, Texas. The*~~[-and said]~~ Board shall have all powers necessary, convenient or incidental to carry out the purposes for which said District is created. The Board of Directors of said District shall serve without compensation but may be reimbursed for actual expenses incurred by them in the performance of their official duties upon the approval of such expenses by the Board of Directors thereof. All vacancies in the office of director shall be filled for the unexpired term by appointment of the remainder of the Board. If the number of directors is reduced to less than three (3), the remaining directors shall immediately call a special election to fill said vacancies. Upon failure to do so, a District Court may, upon application of any voter or taxpayer of the District, issue a mandate requiring such directors to call and hold such election.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

Passed by the House on May 5, 2001: Yeas 140, Nays 0, 2 present, not voting; passed by the Senate on May 23, 2001: Yeas 30, Nays 0, 1 present, not voting.

Approved June 14, 2001.

Effective June 14, 2001.

CHAPTER 906

S.B. No. 7

AN ACT

relating to the period during which a person arrested is required to be taken before a magistrate or released on bond and to the appointment and compensation of counsel to represent indigent persons accused of crime.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. This Act may be known as the Texas Fair Defense Act.

SECTION 2. Article 1.05I, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (i), (j), and (k) to read as follows:

(c) An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. *Except as otherwise provided by this subsection, if*~~[-if]~~ an indigent defendant is entitled to and requests appointed counsel *and if adversarial judicial proceedings have been initiated against the defendant, a*~~[-the]~~ court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel ~~[-to represent the defendant]~~ as soon as possible, but not later than the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection as soon as possible, but not later than the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel.

(i) *Except as otherwise provided by this subsection, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have not been initiated*

against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel immediately following the expiration of three working days after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the defendant before the expiration of the three working days, the court or the courts' designee shall appoint counsel as provided by Subsection (c). In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection immediately following the expiration of one working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the defendant before the expiration of the one working day, the court or the courts' designee shall appoint counsel as provided by Subsection (c).

(j) Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

(k) A court or the courts' designee may without unnecessary delay appoint new counsel to represent an indigent defendant for whom counsel is appointed under Subsection (c) or (i) if:

(1) the defendant is subsequently charged in the case with an offense different from the offense with which the defendant was initially charged; and

(2) good cause to appoint new counsel is stated on the record as required by Article 26.04(j)(2).

SECTION 3. Subsection (a), Article 14.06, Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (b), in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, if necessary to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in a county bordering the county in which the arrest was made. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

SECTION 4. Article 15.17, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, if necessary to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in a county bordering the county in which the arrest was made. The arrested person may be taken before the magistrate in person or the image of the arrested person may be broadcast by closed circuit television to the magistrate. The magistrate shall inform in clear language the person arrested, either in person or by closed circuit television, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, ~~[of his right to request the appointment of counsel if he is indigent and cannot afford counsel,]~~ and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided

to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate [He] shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law. A closed circuit television system may not be used under this subsection unless the system provides for a two-way communication of image and sound between the arrested person and the magistrate. A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.

(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a), a record shall be made of:

(1) the magistrate informing the person of the person's right to request appointment of counsel;

(2) the magistrate asking the person whether the person wants to request appointment of counsel; and

(3) whether the person requested appointment of counsel.

(f) A record required under Subsection (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).

SECTION 5. (a) Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.033 to read as follows:

Art. 17.033. RELEASE ON BOND OF CERTAIN PERSONS ARRESTED WITHOUT A WARRANT. (a) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(b) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$10,000, not later than the 48th hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(c) On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person under Subsection (a) or (b) for not more than 72 hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested.

(b) Article 17.033, Code of Criminal Procedure, as added by this Act, applies only to a person who is arrested on or after the effective date of this Act. A person who is arrested before the

effective date of this Act is covered by the law in effect at the time of the arrest, and the former law is continued in effect for that purpose.

SECTION 6. Article 26.04, Code of Criminal Procedure, is amended to read as follows:

Art. 26.04. *PROCEDURES FOR APPOINTING [COURT SHALL APPOINT] COUNSEL.*

(a) *The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.*

(b) *Procedures adopted under Subsection (a) shall:*

(1) *authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;*

(2) *apply to each appointment of counsel made by a judge or the judges' designee in the county;*

(3) *ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;*

(4) *require appointments for defendants in capital cases in which the death penalty is sought to comply with the requirements under Article 26.052;*

(5) *ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and*

(6) *ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.*

(c) *Whenever a [the] court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines that a defendant charged with a felony or a misdemeanor punishable by confinement [imprisonment] is indigent or that the interests of justice require representation of a defendant in a criminal proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to defend the defendant in accordance with this subsection and the procedures adopted under Subsection (a). If the court or the courts' designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant [him].*

(d) *A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:*

(1) *applies to be included on the list;*

(2) *meets the objective qualifications specified by the judges under Subsection (e);*

(3) *meets any applicable qualifications specified by the Task Force on Indigent Defense;*
and

(4) *is approved by a majority of the judges who established the appointment list under Subsection (e).*

(e) *In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:*

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications.

(f) In a county in which a public defender is appointed under Article 26.044, the court or the courts' designee may appoint the public defender to represent the defendant in accordance with guidelines established for the public defender.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An alternative program for appointing counsel in felony cases may be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

(1) the alternative program may:

(A) use a single method for appointing counsel or a combination of methods; and

(B) use a multicounty appointment list using a system of rotation; and

(2) the procedures adopted under Subsection (a) must ensure that:

(A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:

(i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in misdemeanor cases punishable by confinement; and

(ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;

(B) attorneys appointed using the alternative program to represent defendants in felony cases:

(i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in felony cases; and

(ii) are approved by a majority of the judges of the district courts trying felony cases in the county;

(C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and

(D) appointments are reasonably and impartially allocated among qualified attorneys.

(h) In a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, a court or the courts' designee may appoint an attorney to represent an indigent defendant by using the alternative program. In establishing an alternative program under Subsection (g), the judges of the courts establishing the program may not, without the approval of the commissioners court, obligate the county by contract or by the creation of new positions that cause an increase in expenditure of county funds.

(i) A court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused of a felony may appoint an attorney from any county located in the court's administrative judicial region.

(j) An attorney appointed under this article [subsection] shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed; and

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record.

(k) A court may replace an attorney who violates Subsection (j)(1) with other counsel. A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).

(l) Procedures adopted under Subsection (a) must include procedures and financial standards for determining whether a defendant is indigent. The procedures and standards shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail.

(m) [(b)] In determining whether a defendant is indigent, the court or the courts' designee may [shall] consider [such factors as] the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant[, and whether the defendant has posted or is capable of posting bail]. The court or the courts' designee may not consider whether [deny appointed counsel to a defendant solely because] the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.

(n) [(e)] A defendant who requests a determination of indigency and appointment of counsel shall:

(1) complete under oath a questionnaire concerning his financial resources;

(2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or

(3) complete the questionnaire and respond to examination by the judge or magistrate.

(o) [(d)] Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath a statement substantially in the following form:

"On this _____ day of _____, 20 [49]__, I have been advised by the (name of the court) Court of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)"

(p) *A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. [(e)] If there is a material change in financial circumstances after a determination of indigency or nonindigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.*

(q) ~~[(f)]~~ *A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant. This subsection does not prohibit prosecution of the defendant under Chapter 37, Penal Code.*

(r) *A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.*

SECTION 7. Article 26.044, Code of Criminal Procedure, is amended to read as follows:

Art. 26.044. PUBLIC DEFENDER ~~[IN COUNTY WITH FOUR COUNTY COURTS AND FOUR DISTRICT COURTS]~~. (a) *In this chapter, "public defender" means a governmental entity or nonprofit corporation:*

- (1) operating under a written agreement with a governmental entity, other than an individual judge or court;*
- (2) using public funds; and*
- (3) providing legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 71.001, Government Code.*

(b) *The commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases in the county, ~~[having four county courts and four district courts]~~ may appoint a governmental entity or nonprofit corporation ~~[one or more attorneys]~~ to serve as a public defender. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a regional [A] public defender ~~[serves at the pleasure of the commissioners court]~~. In appointing a public defender under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify, if appointing a regional public defender:*

- (1) the duties of the public defender;*
- (2) the types of cases to which the public defender may be appointed under Article 26.04(f) and the courts in which the public defender may be required to appear;*
- (3) whether the public defender is appointed to serve a term or serve at the pleasure of the commissioners court or the commissioners courts; and*
- (4) if the public defender is appointed to serve a term, the term of appointment and the procedures for removing the public defender.*

(c) *Before appointing a public defender under Subsection (b), the commissioners court or commissioners courts shall solicit proposals for the public defender. A proposal must include:*

- (1) a budget for the public defender, including salaries;*
- (2) a description of each personnel position, including the chief public defender position;*
- (3) the maximum allowable caseloads for each attorney employed by the proponent;*
- (4) provisions for personnel training;*
- (5) a description of anticipated overhead costs for the public defender; and*
- (6) policies regarding the use of licensed investigators and expert witnesses by the proponent.*

(d) *After considering each proposal for the public defender submitted by a governmental entity or nonprofit corporation, the commissioners court or commissioners courts shall select a proposal that reasonably demonstrates that the proponent will provide adequate quality representation for indigent defendants in the county or counties.*

(e) *The total cost of the proposal may not be the sole consideration in selecting a proposal.*

(f) ~~[(b)]~~ To be eligible for appointment as a public defender, *the governmental entity or nonprofit corporation [a person]* must be directed by a chief public defender who:

- (1) is ~~[be]~~ a member of the State Bar of Texas;
- (2) has ~~[have]~~ practiced law for at least *three years* ~~[one year]~~; and
- (3) has substantial ~~[have]~~ experience in the practice of criminal law.

(g) A ~~[(e) The]~~ public defender is entitled to receive *funds for personnel costs and expenses incurred in operating as a public defender in amounts* ~~[an annual salary in an amount]~~ fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the public defender serves more than one county.

(h) A public defender may employ attorneys, licensed investigators, and other personnel necessary to perform the duties of the public defender as specified by the commissioners court or commissioners courts under Subsection (b)(1).

(i) ~~[(d)]~~ Except as authorized by this article, the chief ~~[a]~~ public defender or an attorney employed by a public defender may not:

- (1) engage in the private practice of criminal law; or
- (2) accept anything of value not authorized by this article for services rendered under this article.

(j) A public defender may refuse an appointment under Article 26.04(f) if:

- (1) a conflict of interest exists;
- (2) the public defender has insufficient resources to provide adequate representation for the defendant;
- (3) the public defender is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or
- (4) the public defender shows other good cause for refusing the appointment.

(k) ~~[(e)]~~ The judge may remove a public defender who violates a provision of Subsection (i) ~~[(d) of this article]~~.

(l) ~~[(f)]~~ A public defender or an attorney appointed by a court of competent jurisdiction shall represent each indigent person who is charged with a criminal offense in a county having at least four county courts and at least four district courts and each indigent minor who is a party to a juvenile delinquency proceeding in the county.

~~[(g)]~~ A public defender may investigate the financial condition of any person the public defender is appointed to represent. The defender shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.

(m) ~~[(h)]~~ If it is necessary that an attorney other than a public defender be ~~[is]~~ appointed, the attorney is entitled to the compensation provided by Article 26.05 of this code.

~~[(i)]~~ At any stage of the proceeding, including appeal or other postconviction proceedings, the judge may appoint another attorney to represent the person. The substitute attorney is entitled to the compensation provided by Article 26.05 of this code.

~~[(j)]~~ Except for the provisions relating to daily appearance fees, Article 26.05 of this code applies to a public defender appointed under this article.]

SECTION 8. Article 26.05, Code of Criminal Procedure, is amended to read as follows:

Art. 26.05. COMPENSATION OF COUNSEL APPOINTED TO DEFEND. (a) A counsel, other than an attorney with a public defender ~~[defender's office]~~, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be ~~[reimbursed for reasonable expenses incurred with prior court approval for purposes of investigation and expert testimony and shall be]~~ paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, *and* ~~[or]~~ time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires; ~~[and]~~

(3) preparation of an appellate brief *and preparation and presentation of oral argument* to a court of appeals or the Court of Criminal Appeals; *and*

(4) *preparation of a motion for rehearing.*

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the *judges of the county courts, statutory county courts, and district courts trying criminal cases in* ~~[county and district criminal court judges within]~~ each county. *On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county* ~~[, except that in a county with only one judge with criminal jurisdiction the schedule will be adopted by the administrative judge for that judicial district].~~

(c) Each fee schedule adopted *shall state reasonable* ~~[will include a]~~ fixed rates or ~~[rate,]~~ minimum and maximum hourly rates, *taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, [and daily rates]* and shall ~~[will]~~ provide a form for the appointed counsel to itemize ~~[reporting]~~ the types of services performed ~~[in each one]~~. No payment shall be made under this article ~~[section]~~ until the form for itemizing ~~[reporting]~~ the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. *If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment and determine the appropriate amount of payment. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region [and approved by the court] and that is in accordance with the fee schedule for that county.*

(d) *A counsel in a noncapital case, other than an attorney with a public defender, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).*

(e) *A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.*

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.

(g) ~~[(e)]~~ If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay *during the pendency of the charges or, if convicted, as court costs* the amount that it finds the defendant is able to pay.

(h) ~~[(f)]~~ Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702,

Occupations Code, [the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes)] or to an expert witness in the manner designated by appointed counsel and approved by the court.

SECTION 9. Article 26.052, Code of Criminal Procedure, is amended by amending Subsections (d) and (e) and adding Subsection (m) to read as follows:

(d)(1) The committee shall adopt standards for the qualification of attorneys *to be appointed to represent indigent defendants in capital cases in which the death penalty is sought* [~~for appointment to death penalty cases~~].

(2) The standards must require that an attorney appointed to a death penalty case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;

(C) have at least five years of experience in criminal litigation;

(D) have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;

(E) have trial experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

(ii) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and

(F) have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases.

(3) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(4) Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to the defense of death penalty cases. The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, [counsel] to represent an indigent defendant as soon as practicable after charges are filed, *unless the state gives notice in writing that the state will not seek the death penalty* [~~if the death penalty is sought in the case. The judge shall appoint lead trial counsel from the list of attorneys qualified for appointment. The judge shall appoint a second counsel to assist in the defense of the defendant, unless reasons against the appointment of two counsel are stated in the record~~].

(m) The local selection committee shall annually review the list of attorneys posted under Subsection (d) to ensure that each listed attorney satisfies the requirements under this chapter.

SECTION 10. Subsection (h), Article 102.075, Code of Criminal Procedure, is amended to read as follows:

(h) The comptroller shall deposit money received under this article to the credit of the following accounts in the general revenue fund according to the specified percentages:

NAME OF ACCOUNT	PERCENTAGE
abused children's counseling	0.02%
crime stoppers assistance	0.6%

breath alcohol testing	1.28%
Bill Blackwood Law Enforcement Management Institute	5.04%
law enforcement officers standards and education	11.63%
comprehensive rehabilitation	12.37%
operator's and chauffeur's license	25.9%
criminal justice planning	29.18%
<i>fair defense account</i>	13.98%

SECTION 11. Chapter 51, Family Code, is amended by adding Section 51.101 to read as follows:

Sec. 51.101. APPOINTMENT OF COUNSEL PLAN. (a) The juvenile board in each county shall adopt a plan that:

(1) specifies the qualifications necessary for an attorney to be included on an appointment list from which attorneys are appointed to represent children in proceedings under this title; and

(2) establishes procedures for:

(A) including attorneys on the appointment list and removing attorneys from the list;

and

(B) appointing attorneys from the appointment list to individual cases.

(b) A plan adopted under Subsection (a) must:

(1) to the extent practicable, comply with the requirements of Article 26.04, Code of Criminal Procedure, except that:

(A) the income and assets of the child's parent or other person responsible for the child's support must be used in determining whether the child is indigent; and

(B) any alternative plan for appointing counsel is established by the juvenile board in the county; and

(2) recognize the differences in qualifications and experience necessary for appointments to cases in which:

(A) the allegation is:

(i) conduct indicating a need for supervision;

(ii) delinquent conduct, and commitment to the Texas Youth Commission is not an authorized disposition; or

(iii) delinquent conduct, and commitment to the Texas Youth Commission without a determinate sentence is an authorized disposition;

(B) determinate sentence proceedings have been initiated; or

(C) proceedings for discretionary transfer to criminal court have been initiated.

SECTION 12. Section 71.001, Government Code, is amended to read as follows:

Sec. 71.001. DEFINITIONS. In this chapter: (1) "Ad hoc assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense.

(2) "Chair" means the chair of the council.

(3) "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.

(4) [(2)] "Council" means the Texas Judicial Council.

(5) "Crime" means:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(6) "Defendant" means a person accused of a crime or a juvenile offense.

(7) "Indigent defense support services" means criminal defense services that:

(A) are provided by licensed investigators, experts, or other similar specialists, including forensic experts and mental health experts; and

(B) are reasonable and necessary for appointed counsel to provide adequate representation to indigent defendants.

(8) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(9) "Public defender" has the meaning assigned by Article 26.044(a), Code of Criminal Procedure.

SECTION 13. Subchapter C, Chapter 71, Government Code, is amended by adding Section 71.0351 to read as follows:

Sec. 71.0351. INDIGENT DEFENSE INFORMATION. (a) Not later than January 1 of each year, in each county, a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code, shall be prepared and sent to the Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the office. Except as provided by Subsection (b), the local administrative district judge in each county, or the person designated by the judge, shall prepare and send to the office of court administration a copy of all rules and forms adopted by the judges of the district courts trying felony cases in the county. Except as provided by Subsection (b), the local administrative statutory county court judge in each county, or the person designated by the judge, shall prepare and send to the office of court administration a copy of all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.

(b) If the judges of two or more levels of courts adopt the same formal and informal rules and forms as described by Subsection (a), the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall prepare and send to the Office of Court Administration of the Texas Judicial System a copy of the rules and forms.

(c) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the office and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:

(1) in each district, county, statutory county, and appellate court;

(2) in cases for which a private attorney is appointed for an indigent defendant;

(3) in cases for which a public defender is appointed for an indigent defendant;

(4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and

(5) for investigation expenses, expert witness expenses, or other litigation expenses.

(d) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the Office of Court Administration of the Texas Judicial

System under this section and under a reporting plan developed by the Task Force on Indigent Defense under Section 71.061(a).

(e) On receipt of information required under this section, the Office of Court Administration of the Texas Judicial System shall forward the information to the Task Force on Indigent Defense.

SECTION 14. Chapter 71, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. TASK FORCE ON INDIGENT DEFENSE

Sec. 71.051. ESTABLISHMENT OF TASK FORCE; COMPOSITION. *The Task Force on Indigent Defense is established as a standing committee of the council and is composed of eight ex officio members and five appointive members.*

Sec. 71.052. EX OFFICIO MEMBERS. *The ex officio members are:*

(1) *the following six members of the council:*

- (A) *the chief justice of the supreme court;*
- (B) *the presiding judge of the court of criminal appeals;*
- (C) *the member of the senate appointed by the lieutenant governor;*
- (D) *the member of the house of representatives appointed by the speaker of the house;*
- (E) *one of the courts of appeals justices serving on the council who is designated by the governor to serve on the Task Force on Indigent Defense; and*
- (F) *one of the county court or statutory county court judges serving on the council who is designated by the governor to serve on the Task Force on Indigent Defense or, if a county court or statutory county court judge is not serving on the council, one of the statutory probate court judges serving on the council who is designated by the governor to serve on the task force;*

(2) *the chair of the Senate Criminal Justice Committee; and*

(3) *the chair of the House Criminal Jurisprudence Committee.*

Sec. 71.053. APPOINTMENTS. (a) *The governor shall appoint with the advice and consent of the senate five members of the Task Force on Indigent Defense as follows:*

(1) *one member who is an active district judge serving as a presiding judge of an administrative judicial region;*

(2) *one member who is a judge of a constitutional county court or who is a county commissioner;*

(3) *one member who is a practicing criminal defense attorney;*

(4) *one member who is a public defender or who is employed by a public defender; and*

(5) *one member who is a judge of a constitutional county court or who is a county commissioner of a county with a population of 250,000 or more.*

(b) *The members serve staggered terms of two years, with two members' terms expiring February 1 of each odd-numbered year and two members' terms expiring February 1 of each even-numbered year.*

(c) *In making appointments to the Task Force on Indigent Defense, the governor shall attempt to reflect the geographic and demographic diversity of the state.*

(d) *A person may not be appointed to the Task Force on Indigent Defense if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the task force or the council.*

Sec. 71.054. VACANCIES. *A vacancy on the Task Force on Indigent Defense must be filled for the unexpired term in the same manner as the original appointment. An appointment to fill a vacancy shall be made not later than the 90th day after the date the vacancy occurs.*

Sec. 71.055. MEETINGS; QUORUM; VOTING. (a) The Task Force on Indigent Defense shall meet at least quarterly and at such other times as it deems necessary or convenient to perform its duties.

(b) Six members of the Task Force on Indigent Defense constitute a quorum for purposes of transacting task force business. The task force may act only on the concurrence of five task force members or a majority of the task force members present, whichever number is greater. The task force may develop policies and standards under Section 71.060 only on the concurrence of seven task force members.

(c) A Task Force on Indigent Defense member is entitled to vote on any matter before the task force, except as otherwise provided by rules adopted by the task force and ratified by the council.

Sec. 71.056. COMPENSATION. A Task Force on Indigent Defense member may not receive compensation for services on the task force but is entitled to be reimbursed for actual and necessary expenses incurred in discharging the member's duties as a task force member. The expenses are paid from funds appropriated to the task force.

Sec. 71.057. BUDGET. (a) The Task Force on Indigent Defense budget shall be a part of the budget for the council. In preparing a budget and presenting the budget to the legislature, the task force shall consult with the executive director of the Office of Court Administration of the Texas Judicial System.

(b) The Task Force on Indigent Defense budget may include funds for personnel who are employees of the council but who are assigned to assist the task force in performing its duties.

(c) The executive director of the Office of Court Administration of the Texas Judicial System may not reduce or modify the Task Force on Indigent Defense budget or use funds appropriated to the task force without the approval of the task force.

Sec. 71.058. FAIR DEFENSE ACCOUNT. The fair defense account is an account in the general revenue fund that may be appropriated only to the Task Force on Indigent Defense for the purpose of implementing this subchapter.

Sec. 71.059. ACCEPTANCE OF GIFTS, GRANTS, AND OTHER FUNDS; STATE GRANTS TEAM. (a) The Task Force on Indigent Defense may accept gifts, grants, and other funds from any public or private source to pay expenses incurred in performing its duties under this subchapter.

(b) The State Grants Team of the Governor's Office of Budget and Planning may assist the Task Force on Indigent Defense in identifying grants and other resources available for use by the task force in performing its duties under this subchapter.

Sec. 71.060. POLICIES AND STANDARDS. (a) The Task Force on Indigent Defense shall develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings. The policies and standards may include:

(1) performance standards for counsel appointed to represent indigent defendants;

(2) qualification standards under which attorneys may qualify for appointment to represent indigent defendants, including:

(A) qualifications commensurate with the seriousness of the nature of the proceeding;

(B) qualifications appropriate for representation of mentally ill defendants and noncitizen defendants;

(C) successful completion of relevant continuing legal education programs approved by the council; and

(D) testing and certification standards;

(3) standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants;

(4) standards for determining whether a person accused of a crime or juvenile offense is indigent;

(5) policies and standards governing the organization and operation of an ad hoc assigned counsel program;

(6) policies and standards governing the organization and operation of a public defender consistent with recognized national policies and standards;

(7) standards for providing indigent defense services under a contract defender program consistent with recognized national policies and standards;

(8) standards governing the reasonable compensation of counsel appointed to represent indigent defendants;

(9) standards governing the availability and reasonable compensation of providers of indigent defense support services for counsel appointed to represent indigent defendants;

(10) standards governing the operation of a legal clinic or program that provides legal services to indigent defendants and is sponsored by a law school approved by the supreme court;

(11) policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code; and

(12) other policies and standards for providing indigent defense services as determined by the task force to be appropriate.

(b) The Task Force on Indigent Defense shall submit policies and standards developed under Subsection (a) to the council for ratification.

(c) Any qualification standards adopted by the Task Force on Indigent Defense under Subsection (a) that relate to the appointment of counsel in a death penalty case must be consistent with the standards specified under Article 26.052(d), Code of Criminal Procedure. An attorney who is identified by the task force as not satisfying performance or qualification standards adopted by the task force under Subsection (a) may not accept an appointment in a capital case.

Sec. 71.061. COUNTY REPORTING PLAN; TASK FORCE REPORTS. (a) The Task Force on Indigent Defense shall develop a plan that establishes statewide requirements for counties relating to reporting indigent defense information. The plan must include provisions designed to reduce redundant reporting by counties and provisions that take into consideration the costs to counties of implementing the plan statewide. The task force shall use the information reported by a county to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The task force may revise the plan as necessary to improve monitoring of indigent defense policies, standards, and procedures in this state.

(b) The Task Force on Indigent Defense shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and shall publish in written and electronic form a report:

(1) containing the information forwarded to the task force from the Office of Court Administration of the Texas Judicial System under Section 71.0351(e); and

(2) regarding:

(A) the quality of legal representation provided by counsel appointed to represent indigent defendants;

(B) current indigent defense practices in the state as compared to state and national standards;

(C) efforts made by the task force to improve indigent defense practices in the state; and

(D) recommendations made by the task force for improving indigent defense practices in the state.

(c) The Task Force on Indigent Defense shall annually submit to the Legislative Budget Board and council and shall publish in written and electronic form a detailed report of all expenditures made under this subchapter, including distributions under Section 71.062.

(d) The Task Force on Indigent Defense may issue other reports relating to indigent defense as determined to be appropriate by the task force.

Sec. 71.062. TECHNICAL SUPPORT; GRANTS. (a) The Task Force on Indigent Defense shall:

(1) provide technical support to:

(A) assist counties in improving their indigent defense systems; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense;

(2) direct the comptroller to distribute funds, including grants, to counties to provide indigent defense services in the county; and

(3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by directing the comptroller to:

(A) withdraw grant funds; or

(B) require reimbursement of grant funds by the county.

(b) The Task Force on Indigent Defense shall direct the comptroller to distribute funds as required by Subsection (a)(2) based on a county's compliance with standards developed by the task force and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) The Task Force on Indigent Defense shall develop policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner.

(d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the Task Force on Indigent Defense under this section.

Sec. 71.063. IMMUNITY FROM LIABILITY. The Task Force on Indigent Defense or a member of the task force performing duties on behalf of the task force is not liable for damages arising from an act or omission within the scope of the duties of the task force.

SECTION 15. Articles 26.041, 26.042, 26.043, 26.045, 26.046, 26.047, 26.048, 26.049, 26.050, 26.053, as added by Senate Bill No. 1781, 77th Legislature, Regular Session, 2001, 26.054, as added by Senate Bill No. 1781, 77th Legislature, Regular Session, 2001, and 26.058, Code of Criminal Procedure, are repealed.

SECTION 16. The change in law made by this Act applies only to a person arrested for or charged with an offense committed or, for purposes of Title 3, Family Code, a child taken into custody for conduct or alleged to have engaged in conduct that occurs on or after the effective date of this Act and to the appointment of counsel for that person or child. A person arrested for or charged with an offense committed or a child taken into custody for conduct or alleged to have engaged in conduct that occurs before the effective date of this Act is covered by the law in effect when the offense was committed or the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 17. A county having established a public defender under a statute repealed or amended by this Act may continue the existence and operation of the public defender under the terms of the repealed or amended statute as that statute existed immediately before the effective date of this Act if the public defender is a governmental entity or nonprofit corporation described by Subsection(a), Article 26.044, Code of Criminal Procedure, as amended by this Act. The change in law made by this Act to Article 26.044, Code of Criminal Procedure, applies only to a public defender appointed on or after the effective date of this Act.

SECTION 18. A local administrative judge or other person designated under Subsection (a) or (b), Section 71.0351, Government Code, as added by this Act, shall begin sending to the Office of Court Administration of the Texas Judicial System the information required to be sent by that section on or before January 1, 2002. A county auditor or other person designated under

Subsection (c), Section 71.0351, Government Code, as added by this Act, shall begin sending to the Office of Court Administration of the Texas Judicial System the information required by that section on or before September 1, 2002.

SECTION 19. The governor shall make appointments to the Task Force on Indigent Defense as soon as practicable after the effective date of this Act. In appointing the initial members of the task force, the governor shall appoint the member who is an active district judge serving as a presiding judge of an administrative judicial region and the member who is a practicing criminal defense attorney for terms expiring February 1, 2003, and the member who is a judge of a constitutional county court or who is a county commissioner and the member who is a public defender or who is employed by a public defender for terms expiring February 1, 2004.

SECTION 20. A local selection committee shall amend standards previously adopted by the committee to conform with the requirements of Subsection (d), Article 26.052, Code of Criminal Procedure, as amended by this Act, not later than April 1, 2002. An attorney appointed on or after April 1, 2002, to a death penalty case must meet the standards adopted in conformity with the amended Subsection (d), Article 26.052. An attorney appointed before April 1, 2002, to a death penalty case is covered by the law in effect when the attorney was appointed, and the former law is continued in effect for that purpose.

SECTION 21. Subsection (h), Article 102.075, Code of Criminal Procedure, as amended by this Act, applies only to a court cost collected under that article on or after the effective date of this Act. A court cost collected under Article 102.075, Code of Criminal Procedure, before the effective date of this Act is governed by the law in effect when the court cost was collected, and the former law is continued in effect for that purpose.

SECTION 22. This Act takes effect January 1, 2002.

Passed the Senate on April 10, 2001, by a viva-voce vote; and that the Senate concurred in House amendments on May 24, 2001, by a viva-voce vote; passed the House, with amendments, on May 17, 2001, by a non-record vote.

Approved June 14, 2001.

Effective January 1, 2002.

CHAPTER 907

S.B. No. 19

AN ACT

relating to health education in public schools and to the improvement of children's health through daily physical activity in public schools and a coordinated approach by public schools to prevent obesity and certain diseases.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 28.002, Education Code, is amended by adding Subsection (l) to read as follows:

(l) The State Board of Education, after consulting with educators, parents, and medical professionals, by rule may require a student enrolled in kindergarten or a grade level below grade seven in an elementary school setting to participate in daily physical activity as part of a school district's physical education curriculum or through structured activity during a school campus's daily recess, except that the board may not require more than 30 minutes of daily physical activity. If the board adopts rules under this subsection, the board must provide for an